

**Introduced by Senator Simitian**

February 17, 2011

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An act to add ~~Section 11110~~ *Sections 11110 and 11111* to the Health and Safety Code, relating to nonprescription drugs.

LEGISLATIVE COUNSEL'S DIGEST

SB 514, as amended, Simitian. Dextromethorphan: sale to minors prohibited.

Existing law prohibits a manufacturer, wholesaler, retailer, or other person from selling, transferring, or otherwise furnishing a specified substance, including ephedrine and pseudoephedrine, to a person under 18 years of age, except as specified. A first violation of this provision is a misdemeanor. Existing law further regulates the sale of nonprescription drugs, as specified.

This bill would, in addition, make it an infraction for any person, *corporation, or retail distributor*, in an over-the-counter sale to, without a prescription, *to* willfully and knowingly *supply, deliver, or give possession of a nonprescription drug containing dextromethorphan* to a person under 18 years of age ~~a nonprescription drug containing dextromethorphan~~. *The bill would provide that proof that bona fide evidence of majority and identity was demanded and shown shall be a defense to any criminal prosecution.*

*The bill would further provide that a retail clerk who fails to require and obtain proof of age from the purchaser shall not be guilty of an infraction; or subject to any civil penalties, or subject to any disciplinary action or discharge by his or her employer, unless the retail clerk is a willful participant in an ongoing criminal conspiracy to violate the*

provisions prohibiting the sale of dextromethorphan to minors. By creating new crimes, this bill would impose a state-mandated local program.

*The bill would require a person, corporation, or retail distributor that sells a product containing dextromethorphan to use a cash register that is equipped with an age-verification feature that directs the retail clerk to request identification before the product may be purchased, as provided.*

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 11110 is added to the Health and Safety  
2 Code, to read:  
3 11110. (a) It shall be an infraction for any person ~~in an~~  
4 ~~over-the-counter sale to, without a prescription,, corporation, or~~  
5 ~~retail distributor to willfully and knowingly deliver to a person~~  
6 ~~under 18 years of age supply, deliver, or give possession of a drug,~~  
7 material, compound, mixture, preparation, or substance containing  
8 any quantity of dextromethorphan (the dextrorotatory isomer of  
9 3-methoxy-N-methylmorphinan, including its salts, but not  
10 including its racemic or levorotatory forms) *to a person under 18*  
11 *years of age in an over-the-counter sale without a prescription.*  
12 (b) ~~(1)~~ It shall be prima facie evidence of a violation of this  
13 section if the person, *corporation, or retail distributor* making the  
14 sale does not require and obtain ~~proof of age~~ *bona fide evidence*  
15 *of majority and identity* from the purchaser, unless from the  
16 purchaser's outward appearance the person making the sale would  
17 reasonably presume the purchaser to be 25 years of age or older.  
18 ~~(2) For the purposes of this section, "proof of age" means any~~  
19 ~~document issued by a governmental agency that contains a~~  
20 ~~description or photograph of the person and gives the person's~~  
21 ~~date of birth, including a passport, military identification card, or~~  
22 ~~driver's license.~~

1     ~~(e) It shall be an affirmative defense to a violation of this section~~  
2 ~~if the defendant proves, by a preponderance of the evidence, all~~  
3 ~~of the following:~~

4     ~~(1) The person making the sale required and obtained proof of~~  
5 ~~age from the purchaser.~~

6     ~~(2) The purchaser falsely represented his or her age by the use~~  
7 ~~of a false, forged, or altered document.~~

8     ~~(3) The appearance of the purchaser would lead an ordinary and~~  
9 ~~prudent person to believe that the purchaser was at least 18 years~~  
10 ~~of age.~~

11     ~~(4) The sale was made in good faith and in reliance upon the~~  
12 ~~appearance and representation of proof of age of the purchaser.~~

13     ~~(c) Proof that a person, corporation, or retail distributor, or~~  
14 ~~his or her agent or employee, demanded, was shown, and acted~~  
15 ~~in reasonable reliance upon, bona fide evidence of majority and~~  
16 ~~identity shall be a defense to any criminal prosecution under this~~  
17 ~~section. As used in this section, “bona fide evidence of majority~~  
18 ~~and identity” means a document issued by a federal, state, county,~~  
19 ~~or municipal government, or subdivision or agency thereof,~~  
20 ~~including, but not limited to, a motor vehicle operator’s license,~~  
21 ~~California state identification card, identification card issued to~~  
22 ~~a member of the Armed Forces, or other form of identification that~~  
23 ~~bears the name, date of birth, description, and picture of the~~  
24 ~~person.~~

25     ~~(d) (1) Notwithstanding any other provision of this section, a~~  
26 ~~retail clerk who fails to require and obtain proof of age from the~~  
27 ~~purchaser shall not be guilty of an infraction pursuant to~~  
28 ~~subdivision (a); or subject to any civil penalties, or subject to any~~  
29 ~~disciplinary action or discharge by his or her employer.~~

30     ~~(2) This subdivision shall not apply to a retail clerk who is a~~  
31 ~~willful participant in an ongoing criminal conspiracy to violate~~  
32 ~~this section.~~

33     ~~SEC. 2. Section 11111 is added to the Health and Safety Code,~~  
34 ~~to read:~~

35     ~~11111. A person, corporation, or retail distributor that sells~~  
36 ~~or makes available products containing dextromethorphan, as~~  
37 ~~defined in subdivision (a) of Section 11110, in an over-the-counter~~  
38 ~~sale without a prescription shall, if feasible, use a cash register~~  
39 ~~that is equipped with an age-verification feature to monitor~~  
40 ~~age-restricted items. The cash register shall be programmed to~~

1 *direct the retail clerk making the sale to request bona fide evidence*  
2 *of majority and identity, as described in subdivision (c) of Section*  
3 *11110, before a product containing dextromethorphan may be*  
4 *purchased.*

5 ~~SEC. 2.~~

6 SEC. 3. No reimbursement is required by this act pursuant to  
7 Section 6 of Article XIII B of the California Constitution because  
8 the only costs that may be incurred by a local agency or school  
9 district will be incurred because this act creates a new crime or  
10 infraction, eliminates a crime or infraction, or changes the penalty  
11 for a crime or infraction, within the meaning of Section 17556 of  
12 the Government Code, or changes the definition of a crime within  
13 the meaning of Section 6 of Article XIII B of the California  
14 Constitution.